printed upon the pass alone had been held to be invalid in the earlier case.[8] If the plaintiff had actually earned the transportation as part of the consideration for her employment, the subsequent contract which waived her rights was void. When a valuable consideration actually exists, the courts should look at the facts as they are and should not be misled by a colorable stipulation which the employee is induced to make. In the present case the allegation of actual consideration seems sufficient to present an issue for the jury.

E. J. S.

CONSTITUTIONAL LAW: FEDERAL POLICE POWER.—A recent act of Congress providing for the protection and preservation of "migratory birds", was held by a federal court of the United States to be unconstitutional in the case of *United States v. Shauver.*[1] The act[2] provided that all migratory birds "shall hereafter be deemed to be within the custody and protection of the United States government, and shall not be destroyed or taken contrary to regulations hereinafter provided". The act further authorized the Department of Agriculture "to adopt suitable regulations to give effect to the previous paragraph, by prescribing and fixing closed seasons", and making it unlawful to kill during those closed seasons.

It is submitted the court was correct in its conclusion. The protection of game is a proper subject for the exercise of the police power which is inherent in the states.[3] That the United States may exercise power analogous to the police power of the states it is necessary that such power be derived from some one of the expressed or implied powers given it by the constitution.[4] The "White Slave Act" was upheld under the power of Congress to regulate commerce.[5] The "Lottery Act" was upheld on the same ground.[6] Having exclusive control over the postal system, it has power to prohibit the use of the mails for the transmission of lottery advertisements.[7]

There are only two sources of power under which this "migratory birds" provision could be justified. First, under the power

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[8] Supra, note 7.

[1] (May 25, 1914), 214 Fed. 154.

[2] 37 Stat. at L. 828, 847, ch. 145.

[3] 19 Cyc. 1006; Ex parte Maier (1894), 103 Cal. 476, 37 Pac. 402.

[4] Black's Const. Law, 3d ed., p. 202; Martin v. Hunter (1816), 1 Wheat. 304, 326, 4 L. Ed. 97; Kilbourn v. Thompson (1880), 103 U. S. 168, 26 L. Ed. 377.

[5] Hoke v. United States (1913), 227 U. S. 308, 57 L. Ed. 523, 33 Sup. Ct. Rep. 281.

[6] Champion v. Ames (1903), 188 U. S. 321, 47 L. Ed. 492, 23 Sup. Ct. Rep. 321.

[7] In re Rapier (1892), 143 U. S. 110, 36 L. Ed. 93, 12 Sup. Ct. Rep. 374.

of Congress to regulate interstate commerce.[8] Second, to make rules and regulations respecting property belonging to the United States.[9]

Upon reason and authority this act cannot be sustained as an exercise by Congress of its power to regulate interstate commerce. A bird flying from one state to another is not engaged in commerce or moving as an article of trade within the meaning or definition of that clause, even in the widest extension of that clause in the "White Slave Act".[10] Commerce is defined as that intercourse and traffic, which has to do with the exchange of commodities.[11] If wild game not yet reduced to possession, but flying from one state to another, were within the commerce clause it would be even more questionable whether a state could pass a statute touching such game. However, state acts have been generally upheld touching game brought into and to be sent from one state into another.[12]

Can this act then be sustained under the second power above named? It would seem not, Migratory birds certainly are not property of the United States and by the better view not property at all; like running water they become property by being reduced to possession, and like running water, air and sunshine, are subject to the regulation of each particular state where found.[13]

The fact that Congress could deal with migratory birds more effectively than the states is certainly not a source of federal jurisdiction.

R. J. J.

CONSTITUTIONAL LAW: RIGHT OF STATE TO REVOKE PHYSICIAN'S LICENSE.—A Colorado statute provides that the State Board of Medical Examiners may revoke a physician's license to practice medicine in the state for several causes, among which is "causing the publication and circulation of an advertisement relative to any disease of the sexual organs". In the case of *Chenoweth v. State Board of Medical Examiners*[1] the statute was declared invalid, on the ground, apparently, that it made no declaration to the effect that it was enacted in the interest of public morals. We are to infer from the argument of the court that if, as in a Nebraska statute,[2] the words, "tending to injure the morals of the public"

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[8] U. S. Const. art. I, § 8, subd. 2.

[9] U. S. art. iv, § 3, subd. 2.

[10] Hoke v. United States (1913), 227 U. S. 308, 57 L. Ed. 523, 33 Sup. Ct. Rep. 281.

[11] 7 Cyc. 412.

[12] Geer v. Conn. (1896), 161 U. S. 519, 40 L. Ed. 793, 16 Sup. Ct. Rep. 600; Ex parte Maier (1894), 103 Cal. 476, 37 Pac. 402; Silz v. Hesterberg (1908), 211 U. S. 31, 53 L. Ed. 65, 29 Sup. Ct. Rep. 10.

[13] McCready v. Virginia (1876), 94 U. S. 391, 24 L. Ed. 248; Manchester v. Mass. (1891), 139 U. S. 240, 35 L. Ed. 159, 11 Sup. Ct. Rep. 559.

[1] (Oct. 6, 1913), 141 Pac. 132.

[2] Neb. Comp. Stats., § 4327.